

compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation.¹⁹⁷ It does argue, however, that the Commission should not preempt forms of compensation that are outside the scope of its compensation rules.¹⁹⁸ WorldCom supports the argument made by MCI that the Commission should clarify that its rules supersede any state payphone compensation plans, in order to eliminate the potential for double recovery.¹⁹⁹

d. Discussion

50. Defining Fair Compensation. We deny requests that we reconsider our conclusions in the Report and Order about the existence of a competitive payphone marketplace.²⁰⁰ In the Report and Order, we noted that while the 1996 Act does not prescribe a particular course of action to ensure fair compensation for all payphone calls, it does specify that such action shall "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"²⁰¹ We found in the Report and Order that the "payphone industry has the potential to be very competitive."²⁰² We conclude here that the policies we adopted in the Report and Order will promote competition in a way that will benefit the general public. Because robust competition will take some time to develop, we provided in the Report and Order for a transition period before market-based pricing becomes effective.²⁰³ During this transition period, "states may continue to set the local coin rate in the same manner as they currently do."²⁰⁴ After this transition period, the Commission may, at its option, "ascertain the status of competition in the payphone marketplace,"²⁰⁵ and states may recommend possible market failures to the Commission for

¹⁹⁷ APCC Comments at 22.

¹⁹⁸ Id.

¹⁹⁹ WorldCom Comments at 4.

²⁰⁰ CompTel has filed a Motion requesting that the Commission accept its late-filed Petition for Reconsideration or, in the alternative, treat its filing as Comments on Petitions for Reconsideration. In that the filing deadline for reconsideration petitions is statutorily mandated, we treat CompTel's filing as comments and have given them full consideration as a part of the record. We note that most of the arguments raised in CompTel's filing also have been addressed in the petitions of other parties.

²⁰¹ Report and Order at para. 48 (quoting 47 U.S.C. § 276(b)(1)).

²⁰² Report and Order at para. 11. See also our discussion of the status of competition in the current payphone marketplace. Id. at paras. 11-19.

²⁰³ Id. at para. 50.

²⁰⁴ Id.

²⁰⁵ Id.

investigation.²⁰⁶ We conclude that, while the payphone marketplace may not be currently fully competitive, the rules adopted in the instant proceeding will bring about competition, and this phased-in approach to market-based pricing will allow all parties to make the appropriate adjustments over time. In addition, we conclude that by monitoring the status of competition in the payphone marketplace, and by allowing states to refer potential market failures to us, we have ensured that market failures, particularly those arising from so-called locational monopolies, will be addressed. Because payphone callers in most cases are free to seek out alternative payphones in nearby locations or able to make calls from portable phones, we reject arguments by some petitioners that all payphones will become individual unregulated monopolies with monopoly-level pricing.

51. Ensuring Fair Compensation. We disagree with MCI that our conclusion in the Report and Order concerning the ability of the BOCs to receive per-call compensation for certain 0+ calls interferes with pre-existing contracts, as prohibited by Section 276(b)(3). First, we found in the Report and Order that Section 276 mandates that the Commission provide for fair compensation for all calls originated by payphones, including 0+ calls for which there is no contract that compensates the PSP.²⁰⁷ Second, we found that because pre-existing contracts are grandfathered by Section 276(b)(3), the BOCs "would not otherwise receive any compensation for 0+ calls[.]" because the contracts for such calls are between the location provider and the payphone's presubscribed OSP.²⁰⁸ Third, we concluded that, without disturbing existing contracts that cover 0+ calls, the BOCs should be able to receive the per-call compensation established by the Report and Order, "so long as they do not otherwise receive compensation for ... originating 0+ calls."²⁰⁹ Finally, we note that, as the RBOCs point out, MCI does not argue that the pre-existing contracts between the location providers and the OSPs for BOC payphones are nullified or void. In sum, we conclude that our determination in the Report and Order concerning compensation for 0+ calls originated by BOC payphones is required by the plain language of Section 276(b)(1)(A), which directs us provide fair compensation for "each and every completed intrastate and interstate call[.]" and this determination does not interfere with existing contracts in a manner that is prohibited by Section 276(b)(3). Accordingly, we deny MCI's request for reconsideration of this requirement.

52. In response to the RBOCs' request that we clarify that the BOCs are able to collect per-call compensation for 0+ calls originated from BOC inmate payphones, we conclude that such per-call compensation is warranted when the BOCs do not otherwise receive

²⁰⁶ Id. at para. 61.

²⁰⁷ Id. at para. 53.

²⁰⁸ Id.

²⁰⁹ Id. We note here that these existing contracts will lapse in the years ahead and will be replaced with contracts under which the BOCs will receive whatever compensation arrangement they negotiate with the respective location providers.

compensation pursuant to a contract. This clarification is consistent with our conclusion, as noted above, that BOCs should receive per-call compensation on 0+ calls from their payphones in the absence of receiving compensation under a contract.²¹⁰ In addition, the clarification is consistent with our conclusion in the Report and Order that inmate payphones are to receive the same compensation amount as other payphones, in the absence of a contract that prescribes a compensation methodology.²¹¹ We also clarify here that inmate payphones, whether or not they are maintained by the BOCs, are not eligible for interim flat-rate compensation, because such payphones are not capable of originating either access code or subscriber 800 calls, and the interim compensation is provided only for those two types of calls. Because the level of 0+ commissions paid pursuant to contract on operator service calls is beyond the scope of both Section 276 and this proceeding, we decline to require, as requested by NJPA, that "LECs are required to make available, on a nondiscriminatory basis, any commission payments provided to their own payphone divisions in return for the presubscription of operator service traffic to the LEC."²¹²

53. We concluded in the Report and Order that we have the requisite authority under Sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are fairly compensated for international calls.²¹³ We relied upon our authority under these two sections of the Act, because we concluded that there was "no evidence of congressional intent to leave these calls uncompensated under Section 276."²¹⁴ In addition, we found that a payphone performs similar functions in originating a call, regardless of the call's destination. Therefore, we conclude here that our determination in the Report and Order, pursuant to Sections 4(i) and 201(b) of the Act, is in the interest of equity and is necessary to enact a comprehensive regulatory framework to compensate all payphone calls that are not otherwise compensated pursuant to contract. While MCI argues that it may be difficult for carriers to recover the costs of per-call compensation on international calls, we conclude, as discussed more fully below, that carriers and PSPs may negotiate differing compensation amounts, which take into account varying costs, for different types of calls.²¹⁵

54. Completed Calls. Because it would be an interpretation inconsistent with our responsibility under Section 276, we deny the request by Cable & Wireless that the Commission allow carriers to treat calls re-originated within the carrier's platform as a single

²¹⁰ Id. at para. 53.

²¹¹ Id. at para. 74.

²¹² NJPA Petition at 11-12.

²¹³ Report and Order at para. 54.

²¹⁴ Id.

²¹⁵ See para. 71, below.

compensable call. We concluded in the Report and Order that, to comply with our statutory mandate that "each and every completed intrastate and interstate call" be compensated, "multiple sequential calls made through the use of a payphone's '#' button should be counted as separate calls for compensation purposes."²¹⁶ Although Cable & Wireless states that this approach is technically difficult, we note that the requirement that carriers track individual calls does not become effective for one year. Carriers will be able to use this period to address these types of technical difficulties with respect to their tracking obligations.

55. We decline to require carriers, if they choose to block calls from particular payphones, to provide an announcement to payphone callers indicating that it is not the payphone equipment that is blocking the call. Although APCC and Peoples suggest that callers may become confused and could possibly damage the payphone equipment, we conclude that PSPs are better equipped to take the necessary steps, including posting notices, to educate callers at their payphones and protect their equipment. We also decline to reconsider our conclusion, as urged by AirTouch, that carriers are permitted to block calls originated by payphones. We conclude that 800 subscribers that are concerned that callers will not be able to reach them from payphones should contact their carriers and negotiate contract terms that will ensure that the 800 subscribers are able to receive such calls. In addition, for reasons discussed more fully below,²¹⁷ we decline to require the PSP to provide a coin-deposit mechanism for calls that are blocked by carriers.

56. We disagree with MCI's argument that PSPs should not be compensated for subscriber 800 calls because, according to MCI, they have the option of blocking these calls if they are concerned about a lack of compensation. MCI argues further that this approach would be inconsistent with our conclusion in the Report and Order that incoming calls need not be compensated because they can be blocked.²¹⁸ First, we concluded in the Report and Order that the average payphone originates a substantial number of subscriber 800 calls, in excess of 85 such calls per month.²¹⁹ In contrast, there was no showing that the average payphone necessarily receives any incoming calls in a typical month. Second, while we recognized in the Report and Order that carriers are permitted to block subscriber 800 calls, we did not address blocking of subscriber 800 calls by PSPs.²²⁰ We note here, however, that, if a PSP blocks access code calls (including 1-800 access numbers), it is in violation of our rules under TOCSIA. Third, we concluded in the Report and Order that Section 276's mandate that we provide fair compensation for "each and every completed intrastate and interstate call" requires us to provide such

²¹⁶ Report and Order at para. 63.

²¹⁷ See para. 89, below.

²¹⁸ Report and Order at para. 64.

²¹⁹ Id. at para. 125.

²²⁰ Id. at para. 49.

compensation for subscriber 800 calls.²²¹ For these reasons, we reject MCI's request that we reconsider our decision to compensate subscriber 800 calls.

57. Local Coin Calls. A number of states argue that our conclusions concerning local coin rates constitute unwarranted preemption of state authority over intrastate telecommunications and is inconsistent with Section 2(b) of the Act. We disagree. Section 276 gives the Commission significant authority to "take all actions necessary" to "promote the widespread deployment of payphone services to the benefit of the general public"²²² and, more specifically, to ensure fair compensation for "each and every completed intrastate and interstate call."²²³ In enacting Section 276 after Section 2(b), and squarely addressing the issue of interstate and intrastate jurisdiction, we find that Congress intended for Section 276 to take precedence over any contrary implications based on Section 2(b). While Section 2(b) of the Act reserves to the states jurisdiction over intrastate communications, Congress can make an exception to that statutory rule whenever it chooses:

...[I]n enacting the 1996 Act, there are other instances where Congress indisputably gave the Commission intrastate jurisdiction without amending Section 2(b). For instance, section 251(e)(1) provides that '[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.' Section 253 directs the FCC to preempt state regulations that prohibit the ability to provide intrastate services. Section 276(b) directs the Commission to 'establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call. Section 276[(c)] provides that '[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.' None of these provisions is specifically exempted from section 2(b), yet all of them explicitly give the FCC jurisdiction over intrastate matters.²²⁴

The exception in Section 276 is broad. As stated in the Conference Report: "In crafting implementing rules, the Commission is not bound to adhere to existing mechanisms or procedures

²²¹ Id. at para. 52.

²²² 47 U.S.C. § 276(b)(1).

²²³ 47 U.S.C. § 276(b)(1)(A).

²²⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, para. 93 (rel. Aug. 8, 1996) (citations omitted; emphasis in the original). In that proceeding, we stated that "[s]ome parties find significance in the fact that earlier drafts of the legislation would have amended section 2(b) to make an exception for Part II of Title II, including section 251, but the enacted version did not include that exception. These parties argue that this change in drafting demonstrates an intention by Congress that the limitations of section 2(b) remain fully in force with regard to sections 251 and 252. We find this argument unpersuasive." Id. at n.150.

established for general regulatory purposes in other provisions of the Communications Act."²²⁵ Congress gave us the requisite authority in Section 276 and directed us to adopt a comprehensive compensation plan for payphones, and we did so in the Report and Order. Congress also provided that "[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements."²²⁶ Contrary to an argument by Maine, we conclude that Section 276(c) eliminates any question about our authority to adopt a particular compensation plan, even if it contradicts existing state regulations. We do not believe that Congress's use of the term "compensation" instead of "rates", as argued by Maine, limits our authority to address local coin rates. We conclude that because Congress gave us broad authority to enact a comprehensive payphone compensation plan, the term "compensation" in Section 276 encompasses the authority to address local coin "rates," because the local coin rate is the only manner in which a PSP is compensated for local coin calls. Accordingly, we deny all petitions for reconsideration that have as their basis arguments that the Commission lacks jurisdiction to deregulate local coin rates, or that our action constitutes unwarranted preemption.

58. We also reject arguments that because the Commission chose to let the market set local coin rates in lieu of itself prescribing a nationwide rate or rate guidelines, that Section 10 of the Act concerning forbearance applies.²²⁷ We conclude here that Congress required the Commission to adopt regulations ensuring fair compensation for all payphone calls and left it to the Commission to determine the appropriate approach to take. Therefore, because the Commission adopted a comprehensive regulatory framework to ensure fair compensation for PSPs and will continue to have oversight over the payphone industry, we conclude that we did not forebear from imposing regulation and are not required to conduct the forbearance analysis required by Section 10.

59. Because Section 276 gives the Commission jurisdiction to ensure fair compensation for "each and every completed call" originated by payphones, we conclude that we have jurisdiction, contrary to arguments by Maine, to impose a market-based rate for intrastate directory assistance calls from payphones. We also clarify here, pursuant to a request from MCI, that PSPs are entitled to require consumers to deposit coins into the payphone for these calls, as they would any other local call. In response to SW Bell's request that the Commission clarify that PSPs may be compensated for 0- general assistance calls where the caller asks for call rates or dialing instructions,²²⁸ we conclude that such a clarification is not appropriate, because such operator inquiries, which are distinct from directory assistance calls, merely seek information on

²²⁵ Jt. Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. (1996) at 43 ("Conference Report").

²²⁶ 47 U.S.C. § 276(c).

²²⁷ See 47 U.S.C. § 10.

²²⁸ SW Bell Petition at 5.

how or whether to complete a future call and, thus, are not "completed" calls that are compensable under Section 276.

60. We conclude that, contrary to arguments by certain states, we gave adequate notice to interested parties, in accordance with the APA, that we were contemplating action concerning local coin rates. We conclude further that this notice was broad enough to encompass the option we ultimately adopted: the determination that the market should set the per-call rate for local coin calls at each payphone. In the Notice, we stated:

We seek comment ... on how we should exercise our jurisdiction under Section 276. We have a range of options for ensuring fair compensation for these calls, and we seek comment on which option will ensure fair compensation for PSPs with respect to coin sent-paid calls.²²⁹

We then discussed a number of possible options within that range, including setting a nationwide local coin rate.²³⁰ Our use of the term "range" is an indication that our articulation of possible options in the Notice was not an exhaustive list, but merely defined various points within the range. The Commission was under no obligation to adopt the precise proposals contained in the Notice. We conclude here that letting the market set local coin rates was within the range of options on which we sought comment and a logical outgrowth from soliciting comment on "how we should exercise our jurisdiction under Section 276" with regard to local coin rates. We note, as the RBOCs point out,²³¹ that various parties responding to the Notice addressed the issue of Commission jurisdiction over local coin rates in their comments.²³²

61. In the Report and Order, we stated that "[b]ased on the record in this proceeding, we conclude that a deregulatory, market-based approach to setting local coin rates is appropriate, because existing local coin rates are not necessarily fairly compensatory."²³³ We also stated that "the market ... is best able to set the appropriate price for payphone calls in the long term."²³⁴ We conclude here, as we did in the Report and Order, that the record contains significant evidence, particularly in the comments of the RBOCs and the independent payphone providers, that the costs associated with each call from a payphone often exceed the local coin rate in a particular state. Therefore, we deny requests that we reconsider our conclusions about

²²⁹ Notice at para. 20.

²³⁰ Id. at 20. Mandating a nationwide local coin rate arguably restricts the states more than a market-based rate, which allows for some variation, both higher and lower.

²³¹ RBOC Comments at 15.

²³² See e.g., California PUC Comments at 9; New York DPS Comments at 3.

²³³ Report and Order at para. 58.

²³⁴ Id. at para. 70.

local coin rates because of arguments by petitioners, such as Maine and Oklahoma CC, that there is no evidence that local coin rates are not fairly compensatory. We also reject suggestions by certain petitioners that the deregulation of local coin rates is not in the public interest and will be met with consumer antagonism. While some disruption or confusion among payphone callers is inevitable with any new policy, we conclude that market-based pricing will result in a greater availability of payphones at more economically efficient prices, which will ultimately benefit callers.

62. A number of states argue that market-based rates will not always lead to reasonably priced payphone services, particularly in situations where the PSP is a monopoly provider. Ohio PUC and Oklahoma CC both request approval for local coin call rate ceilings, while Oklahoma CC individually seeks permission to identify market failures to the Commission immediately. We decline both to reconsider our conclusions and to make the modifications suggested by the states. We conclude here that the Report and Order adequately addresses the possibility of market failures that would lead to local coin rates that are not reasonable.²³⁵ As we concluded in the Report and Order, we will make an exception to the market-based approach for local coin rates in those situations in which the state makes a showing that market-based rates are not possible due to a market failure.²³⁶ Because we intended the exception in the Report and Order to be a limited one, however, we concluded that a state's showing would have to be detailed and likely the result of a state proceeding that itself examined the market failure.

63. Payphone Fraud. MCI, Sprint, and Page request that we reconsider our conclusions about payphone fraud and take steps to reduce the risk of fraud. In the Report and Order, we stated that "[w]e will aggressively take action against those involved in such fraud" and detailed how we would proceed to address fraudulent practices.²³⁷ Without any specific factual circumstances before us, we decline to take further steps that could be both costly and burdensome to all parties involved in payphone compensation. We will continue, however, to monitor developments in this area and respond to specific requests for intervention from carriers or PSPs.

64. In response to requests that we reconsider our conclusions about the definition of "payphone," we make a brief clarification. For the first year of the payphone compensation mechanism, when compensation is paid on a flat-rate basis, the definition of "payphone," for compensation purposes, will be the one that we established in the Second Report and Order in CC Docket No. 91-35, along with the alternative verification procedures.²³⁸ Once per-call compensation becomes effective, we clarify that, to be eligible for such compensation,

²³⁵ Id. at para. 61.

²³⁶ Id.

²³⁷ Id. at para. 65.

²³⁸ Id. at para. 66.

payphones will be required to transmit specific payphone coding digits as a part of their ANI, which will assist in identifying them to compensation payors.²³⁹ Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. We also clarify, pursuant to a request by MCI, that LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone. We decline to require PSPs to use COCOT lines, as suggested by the RBOCs, because we have previously found that COCOT service is not available in all jurisdictions.²⁴⁰

65. More generally, as we stated in the Report and Order, "a payphone is any telephone made available to the public on a fee-per-call basis, independent of any commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling card."²⁴¹ We clarify that this definition of "payphone" excludes from the compensation mechanism phones in hotel rooms, dormitory rooms, or hospital rooms. We also conclude that, as requested by Sprint, once per-call compensation becomes effective, LECs should provide to carrier-payors a list of emergency numbers, as such calls are statutorily exempt from compensation.²⁴²

66. Compensation Amount. We deny all requests for reconsideration of the per-call compensation amount that we adopted in the Report and Order, in which the parties argue that the amount is inconsistent with the cost-based approach the Commission established in the local competition proceeding. Although it could have directed us to adopt a particular methodology for determining fair compensation, Congress did not mandate a cost-based standard for compensation in Section 276, as it did in Section 251. We concluded in the Report and Order that "use of a purely incremental cost standard for all calls could leave PSPs without fair compensation for certain types of payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls."²⁴³ We conclude here that the cost-based TELRIC standard that the Commission relied upon in the local competition proceeding is inapplicable here, because the payphone industry is not a bottleneck facility that is subject to regulation at virtually all levels. We note that it would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had previous experience with any costing systems. In addition, as we concluded in the Report and Order, the payphone industry is likely to become increasingly

²³⁹ Id. at para. 98.

²⁴⁰ Reconsideration Order, 8 FCC Rcd at 7157, n.66.

²⁴¹ Report and Order at para. 66.

²⁴² Contrary to Sprint's request, however, we permit LECs to recover their reasonable costs of producing these lists. Carrier-payors may determine for themselves whether or not they want to obtain the lists from LECs.

²⁴³ Report and Order at para. 68.

competitive.²⁴⁴ We also reject suggestions that use of a market-based compensation standard, in lieu of one that is cost based, will overcompensate PSPs. The marketplace will ensure, over time, that PSPs are not overcompensated. Carriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts, regardless of the local coin rate at particular payphones, and to block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier. Finally, we believe that a cost-based compensation standard could lead to a reduction in payphones by limiting a PSP's recovery of its costs, and this result would be at odds with the legislative purpose of Section 276 that we "promote the widespread deployment of payphone services to the benefit if the general public."²⁴⁵

67. More specifically, in denying all requests for reconsideration of the per-call compensation amount that we adopted in the Report and Order, we reject the arguments that the per-call compensation amount that we adopted in the Report and Order is inconsistent with the cost based approach the Commission established in the local competition proceeding. We conclude that the cost-based TELRIC plus a reasonable share of common cost standard upon which the Commission relied in the local competition proceeding is inapplicable here for three reasons. First, the purpose of the cost-based standard in the interconnection proceeding is to enable competitors to share in the economies of scale, scope and density, and thus rapidly to acquire potentially "bottleneck" elements that they cannot promptly supply themselves, at a cost in conformance with competitive retail pricing. Because of the cost structure of the industry and the ability of firms to rapidly enter, no such urgent need to share the benefits of these economies appears in the present proceeding.

68. Second, we conclude that Congress's use of the phrase "... payphone service providers are fairly compensated for each and every completed interstate and intrastate call..."²⁴⁶ is a different standard than the cost based standard articulated for the compensation for interconnection and unbundled elements. We conclude that the PSP will be providing a competitive service (payphone use) and should therefore receive compensation equal to the market-determined rate for providing this service. As we noted in the Report and Order, the market, as it becomes competitive, should generate the a fair market-determined compensation rate. The cost-based interconnection standard, on the other hand, compensates a carrier for the long run incremental cost of providing interconnection or the long run incremental cost of providing an unbundled element plus a reasonable share of the common costs. Since the local exchange is not yet competitive, we could not rely on the market to set competitive rates for unbundled elements. In the case of payphones, the presence of multiple PSPs already operating in many markets, and the structure of the industry that allows relatively easy entry and exit, leads us to conclude that we can rely on market forces to provide for efficient pricing of these services in the near future.

²⁴⁴ Id. at paras. 11-19, 70.

²⁴⁵ 47 U.S.C. § 276(b)(1).

²⁴⁶ 47 U.S.C. § 276 b(1)(A).

69. Third, the TELRIC plus common cost standard in the local competition proceeding refers to the long run cost of an element or physical facility. Since there are relatively few common costs between separate facilities, TELRIC compensation will compensate a carrier for virtually all costs associated with providing (the services of) that facility. With the addition of a share of the relatively small common costs, the firm will be able to cover its total costs. In this proceeding commenters argue that we should apply a TSLRIC cost standard to only a subset of services (i.e., subscriber 800 and dial around calls) provided by a facility (payphone). In general when several services are provided by the same facility, the incremental cost of providing any one service is very small and the common cost among these services is very large. Thus, a TSLRIC standard under which a carrier is compensated only for the incremental cost of each service individually without a reasonable allocation of common costs, as suggested by commenters, would not allow the carrier to recover the total costs of providing all of the services. A TSLRIC standard that yields prices that recover a reasonable share of joint and common costs would require the difficult allocation of those (large) costs among the different types of calls made from payphones.

70. We also deny WPTA's request that we reconsider our compensation rules because we did not mandate a uniform per-call compensation amount of \$.90 to \$1.50 for each compensable call. Under the approach we established in the Report and Order, the market is allowed to set the compensation amount for calls originated by each payphone. For market-based pricing to function effectively, there must be some variation in compensation amounts from location to location. We also deny Sprint's request that we either rescind the Report and Order in toto or establish a per-call compensation amount of \$0, because Sprint does not present any arguments that were not already considered or contemplated by the Report and Order, and a compensation rate of \$0 would not be in accord with our responsibility under the statute to ensure fair compensation for all payphone calls.

71. A number of carriers argue that the local coin rate is an inappropriate surrogate upon which to base per-call compensation, because coin calls have additional costs, such as coin collection, that other calls do not incur. Therefore, the carriers argue, use of the local coin rate will tend to overcompensate PSPs for compensable subscriber 800 and other calls. We disagree. In the Report and Order, we found that the costs of originating the various types of payphone calls are similar.²⁴⁷ If there are significant cost differences between local coin calls and other types of calls, however, we believe that, over time, the market will address these differences and dictate appropriate per-call compensation amounts for each type of payphone call. We also believe that the market will address likely cost variations in originating local coin calls from payphone to payphone. In this environment of similar-but-not-identical costs in originating the various types of payphone calls, we concluded in the Report and Order that the local coin rate is a default rate that applies in the absence of a contract between the carrier-payor and the PSP. Thus, it is a starting point for negotiations toward a mutually agreeable per-call compensation amount, not a fixed compensation rate. We conclude here that those carriers that are concerned

²⁴⁷Report and Order at para. 70.

about overcompensating PSPs for subscriber 800 calls have substantial leverage, by way of the ability to block these calls from all or particular payphones, to negotiate with PSPs about the appropriate per-call compensation amount. Accordingly, we deny those requests for reconsideration that are premised on the local coin rate being an inappropriate default compensation amount. We also decline to provide for downward adjustments in the default compensation amount to offset possible strategic pricing by PSPs; the carriers can make such provisions themselves through the contracting process.

72. We deny the petitions for reconsideration filed by the inmate PSPs. The inmate PSPs argue that they should be entitled to receive a special \$.90 per-call compensation amount because their costs of service are higher than those of other PSPs. The inmate PSPs argue further that intrastate 0+ calls are frequently subject to state rate caps that are equivalent to the large carriers' standard collect rates for interLATA calls. We note that Section 276(d), which contains the only mention of inmate phones in the payphone statute, states that "the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."²⁴⁸ In the Report and Order, we elected to treat inmate payphones in the same manner as all other payphones, including semi-public payphones.²⁴⁹ Under this approach, inmate payphones are entitled to receive the default compensation rate for any call that is not otherwise compensated by contract or through some other arrangement.²⁵⁰ Because virtually all calls originated by inmate payphones are 0+ calls, inmate PSPs tend to receive their compensation pursuant to contract, which makes them ineligible to receive a per-call compensation amount. As we found in the Report and Order, however, whenever a PSP is able to negotiate for itself the terms of compensation for the calls its payphones originate, then our statutory obligation to provide fair compensation is satisfied.²⁵¹ We note that, in response to their arguments about state-mandated intrastate toll rate ceilings, the inmate petitioners may remind the states that Section 276's mandate that PSPs be fairly compensated for all payphone calls is an obligation that is borne both by us and the states. If an inmate provider believes, after making its arguments to a particular state in light of Section 276 and the instant proceeding, that it is not receiving fair compensation for intrastate toll calls originated by its inmate payphones, it may petition the Commission to review the specific state regulation of which it complains.

73. AT&T and MCI request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation. On the other hand, APCC argues that we should not preempt forms of compensation that are

²⁴⁸ 47 U.S.C. § 276(d).

²⁴⁹ Report and Order at para. 74.

²⁵⁰ Id.

²⁵¹ Id. at paras 49, 52-53.

outside the scope of our compensation rules. We conclude here that, in conjunction with reviewing, and removing if necessary, those regulations that affect competition, such as entry and exit restrictions, pursuant to the Report and Order,²⁵² states should review their compensation regulations to ensure that PSPs are not receiving double compensation for certain types of calls. After a reasonable period for such a review, if any party believes that a specific state compensation rule conflicts with our rules, that party may file a petition for a declaratory ruling, and the Commission will evaluate the state compensation regulation at that time. Accordingly, we decline to make the clarification requested by AT&T and MCI.

2. Entities Required to Pay Compensation

a. Report and Order

74. The Commission concluded in the Report and Order that the primary economic beneficiary of payphone calls should compensate the PSPs.²⁵³ We concluded that the "carrier-pays" system for per-call compensation places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner.²⁵⁴ The Commission has previously adopted such an approach in the access code compensation proceeding, and the compensation participants have created a payment system that is an appropriate model for this proceeding.²⁵⁵ In addition, under the carrier-pays system, individual carriers, while obligated to pay a specified per-call rate to PSPs, have the option of recovering a different amount from their customers, including no amount at all.²⁵⁶

75. The Commission concluded that it is the underlying, facilities-based carrier that should be required to pay compensation to the PSP in lieu of a non-facilities-based carrier that resells services, for example, to specific subscribers or to debit card users.²⁵⁷ Although we have concluded that the primary economic beneficiary of payphone calls should bear the burden of paying compensation for these calls, we concluded that, in the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers.²⁵⁸ We concluded further that the facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers as they

²⁵² Id. at para. 50.

²⁵³ Id. at para. 83.

²⁵⁴ Id.

²⁵⁵ Id.

²⁵⁶ Id.

²⁵⁷ Id. at para. 86.

²⁵⁸ Id.

deem appropriate, including negotiating future contract provisions that would require the reseller to reimburse the facilities-based carrier for the actual payphone compensation amounts associated with that particular reseller.²⁵⁹ While we did not place the burden of paying per-call compensation directly on resellers or debit card providers, we concluded that the underlying carrier must begin paying compensation on all compensable calls facilitated by its reseller and debit card customers and it is, in turn, permitted to impose the payphone compensation amounts on these customers.²⁶⁰

b. Petitions

76. AirTouch argues that the carrier-pays compensation system is not the least burdensome compensation mechanism, because it will impose substantial costs and burdens on the paging industry and lead to significant increases in 800 number service costs.²⁶¹ In addition, it argues that the carrier pays system will harm the public interest by limiting the demand for paging services and rendering the industry less competitive.²⁶²

77. PCIA, AirTouch, PageMart, and PageNet request that the Commission reconsider its decision to reject a "caller-pays" coin-deposit compensation mechanism.²⁶³ They argue that the Commission based its denial on two factors that do not withstand close scrutiny: (1) the burden on callers of depositing coins to make a compensable call; and (2) TOCSIA's prohibition on adopting compensation rules for interstate access code calls that require advance payment by consumers.²⁶⁴ They contend both that the Commission never articulated why a coin-deposit approach was burdensome to callers, and that calls to subscriber 800 number messaging services fall outside the definition of calls for which TOCSIA may prohibit a coin-deposit compensation approach.²⁶⁵

78. AT&T contends that if the Commission decides to retain market-based compensation rates, the Commission should adopt a caller-pays, coin-deposit approach to compensation.²⁶⁶ It argues that this approach would ensure that callers understand the costs

²⁵⁹ Id.

²⁶⁰ Id. at para. 87.

²⁶¹ AirTouch Petition at 7.

²⁶² Id. at 8.

²⁶³ AirTouch Petition at 4-5; PCIA Petition at 1; PageMart Petition at 1; PageNet Petition at 4-5.

²⁶⁴ AirTouch Petition at 4-9; PCIA Petition at 5; PageMart Petition at 2-3.

²⁶⁵ AirTouch Petition at 4-9; PCIA Petition at 5-6; PageMart Petition at 2-3.

²⁶⁶ AT&T Petition at 18-21.

associated with their decision to use a payphone.²⁶⁷ As another alternative supported by the same rationale, AT&T proposes that the Commission adopt a payphone usage fee that carriers would bill as agents for PSPs.²⁶⁸

79. Sprint contends that the Commission should reconsider its adoption of a carrier-pays compensation approach in favor of a set up fee.²⁶⁹ Sprint argues that the set up fee, unlike the carrier-pays compensation approach, would not be regarded as taxable revenue for the IXC.²⁷⁰ It argues that the set up fee has the virtue of giving visibility to the public of the cost of using the payphone.²⁷¹

80. PageNet contends that, if the carrier-pays methodology is adopted, the Commission should limit IXCs to spreading the costs over all 800 subscribers and 800 access code users.²⁷² It argues that this approach would minimize tracking and compensation administration costs.²⁷³ PageNet states that subscriber 800 carriers will not be able to bill their own subscribers on a per-call basis.²⁷⁴

81. PCIA, PageMart, and PageNet argue that the Commission should reconsider its refusal to increase the subscriber line charge ("SLC") as means of spreading the cost of compensation over all callers.²⁷⁵ PCIA argues that the general public is the primary economic beneficiary of payphone calls, and, therefore, the individual telephone subscribers should pay the costs of compensation.²⁷⁶

82. MCI, Sprint, and Cable & Wireless argue that, concurrent with the Commission's conclusion that the primary economic beneficiary of a call should pay the requisite compensation to the PSP, resellers should be required to pay compensation for the calls they receive from payphones, as well as assume responsibility for the call tracking required by the

²⁶⁷ Id. at 19.

²⁶⁸ Id. at 20-21.

²⁶⁹ Sprint Petition at 14.

²⁷⁰ Id.

²⁷¹ Id.

²⁷² PageNet Petition at 16-17.

²⁷³ Id.

²⁷⁴ Id. at 17.

²⁷⁵ PCIA Petition at 9-10; PageMart Petition at 4; PageNet Petition at 5.

²⁷⁶ PCIA Petition at 9-10; PageMart Petition at 4; PageNet Petition at 5.

Report and Order.²⁷⁷ Sprint argues further that there is no guarantee that the facilities-based carrier will be able to recover the costs of compensation from its resellers.²⁷⁸ According to Sprint, facilities-based carriers are not able to tell whether a reseller-handled call has been completed.²⁷⁹

c. Comments

83. The RBOCs contend that, under the carrier-pays approach adopted in the Report and Order, carriers can convert "carrier pays" into a set-use fee themselves by passing costs through to customers as separate line items in their bills.²⁸⁰

84. AirTouch, PCIA and Arch, among other commenters, reassert their position that a "carrier-pays" system of compensation is unduly burdensome or violative of TOCSIA.²⁸¹ PCIA argues that messaging subscribers have no control over which payphone is used by the caller, while the party placing the call can choose between payphones and should thus be the party responsible to pay compensation.²⁸² AT&T asserts that if the Commission adopts a market-based compensation system, rather than a TELRIC-based approach, it must reject the use of a "carrier-pays" system because there is not currently an end-user focused market for local coin calls.²⁸³ Sprint asserts that a caller-pays system eliminates the administrative costs and potential for fraudulent dialing of toll free calls as a means of generating additional revenues for the PSP, and also states that Section 226(e)(2) of the Act is not a bar to up-front payments by the calling party.²⁸⁴ AirTouch concludes that a caller-pays system, not a carrier-pays one, places the payment obligation on the primary economic beneficiary in the least burdensome and most cost effective manner.²⁸⁵

85. The RBOCs argue that the coin-deposit approach for subscriber 800 calls, as urged by some petitioners, would be extremely inconvenient for callers and would have an

²⁷⁷ Cable & Wireless Petition at 13-14; MCI Petition at 16-17; Sprint Petition at 15-17.

²⁷⁸ Sprint Petition at 15.

²⁷⁹ Id. at 16.

²⁸⁰ RBOC Comments at 16.

²⁸¹ See, e.g., AirTouch Comments at 2-3; PCIA Comments at 3-4; Arch Comments at 1-2.

²⁸² PCIA Comments at 4.

²⁸³ AT&T Comments at 8.

²⁸⁴ Sprint Comments at 7.

²⁸⁵ AirTouch Comments at 6. See also Arch Comments at 2.

adverse effect on consumer welfare.²⁸⁶ They argue that it was precisely to avoid the deposit of coins that many 800 numbers were created.²⁸⁷ The RBOCs argue that technical modifications to LEC networks would make a coin-deposit approach prohibitively expensive for situations in which a carrier has blocked calls originated by a particular payphone.²⁸⁸

86. MCI and Sprint assert that the Commission should reject any request that it require IXC's to spread the cost of compensating PSPs over all 800 users.²⁸⁹ MCI argues that such a requirement would be inconsistent with the policy of requiring that costs should be recovered from the cost causer, which in the case of the payphone compensation is the consumer who makes or accepts a call from a payphone.²⁹⁰ In contrast, Arch supports the arguments of those petitioners asserting that, if the Commission rejects a coin-drop approach, then IXC's should be required to spread the cost of compensating PSPs over all 800 subscriber and 800 access code users.²⁹¹ Alternatively, Arch supports a mechanism whereby PSP compensation costs can be recovered through the SLC.²⁹²

87. TRA asserts that the Commission should deny requests to expand its interim compensation mechanism or to require resale carriers to track payphone originated calls or compensate PSPs directly.²⁹³ TRA argues that the exemption for small resale IXC's from the interim compensation and tracking requirements is consistent with prior Commission actions and furthers the congressional intent to increase opportunities for entrepreneurs and other small businesses in the telecommunications industry.²⁹⁴ TRA states that small resale IXC's are least able to bear the burden of administrative costs, in part because they have less flexibility to pass these costs on to their own customers.²⁹⁵

²⁸⁶ RBOC Comments at 17.

²⁸⁷ Id.

²⁸⁸ Id.

²⁸⁹ MCI Comments at 5; Sprint Comments at 10.

²⁹⁰ Id.

²⁹¹ Arch Comments at 5.

²⁹² Id.

²⁹³ TRA Comments at 4-13.

²⁹⁴ Id. at 5-6.

²⁹⁵ Id. at 6-8

d. Discussion

88. As we stated in the Report and Order, we conclude here that of the two approaches initially proposed in the Notice,²⁹⁶ the carrier-pays approach and the set-use fee, the carrier-pays approach "places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner."²⁹⁷ In the case of compensable access code or subscriber 800 calls where the call utilizes a particular carrier no matter the telephone that originates the call, the primary economic beneficiary is the carrier that carries the call. In addition, with specific regard to subscriber 800 calls, we conclude that it is the called party that receives greater economic benefit from the payphone call than the calling party. We believe that the IXC can best pass on, in the most cost effective manner, any charges for compensable calls to the appropriate customer. Therefore, we rejected the caller-pays, coin-deposit approach to compensation, as proposed by commenters, because it would unduly burden transient payphone callers, and we noted that TOCSIA prohibited us from prescribing that approach for interstate access code calls.²⁹⁸ Contrary to the arguments raised by petitioners, we conclude that our rejection of a caller-pays, coin-deposit approach must stand. The Commission has long held that callers should not be required to deposit coins when making a call that it otherwise billed to an account.²⁹⁹ We note that coinless calling, including use of coinless payphones, has proliferated in recent years. We conclude that when transient callers have an expectation that they may avoid carrying coins to make payphone calls, because they will be making only calls billed to a calling card or to a subscriber 800 end-user, it would be burdensome and increase transaction costs to impose a compensation approach that would require callers to acquire coins to make such calls. We conclude further that the ability to make coinless calls from payphones is a convenience that transient callers value.

89. While the prohibition in TOCSIA against advance payment by callers, as cited in the Report and Order,³⁰⁰ does not apply to subscriber 800 calls and, therefore, is not

²⁹⁶ Notice at para. 28.

²⁹⁷ Report and Order at para. 83.

²⁹⁸ Notice at para. 85.

²⁹⁹ Report and Order at para. 85; Notice at para. 27. See also MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 705 (1983), aff'd in principal part, National Assn. of Regulatory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), modified on further recon., 99 FCC 2d 708 (1984), aff'd, American Tel. and Tel. Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987), modified on further recon., 101 FCC 2d 1222 (1985), recon. denied, 102 FCC 2d 849 (1985). See also In the Matter of Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element; Southwestern Bell Telephone Company Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element, Order, DA 96-268 (released March 1, 1996) at para. 27 ("Ameritech/SW Bell Waiver").

³⁰⁰ Report and Order at para. 85.

dispositive, we conclude that the statute's direction that we avoid prescribing such a payment mechanism for a particular class of payphone calls (*i.e.* interstate access code calls) is consistent with our long-standing policy of not burdening callers with the deposit of coins when making a call that is otherwise billed to an account. In addition, if the Commission were to prescribe a coin-deposit compensation approach, TOCSIA would require the PSP to charge the end-user no more for making an access code call than it would charge for a call to the presubscribed OSP. 47 U.S.C. Section 226(c)(1)(c). Thus, use of a coin-deposit compensation approach would require the PSP to impose a charge for access to the presubscribed OSP. More recently, in the 1996 amendments to the Act, Congress prohibited carriers from assessing the calling party a charge for completing any 800 number call.³⁰¹ While this provision of the Act does not expressly apply to PSPs, we conclude that Section 228(c)(7) provides persuasive evidence that Congress intended to ensure access to 800 number subscribers without the calling party incurring a charge.³⁰² In addition to the foregoing reasons, we conclude that it would be unduly burdensome and costly to mandate, as suggested by some petitioners, a caller-pays, coin-deposit approach for a particular type of subscriber 800 calls, such as calls to a paging service, while relying upon a carrier-pays approach for other compensable calls.

90. With regard to arguments by AT&T and Sprint that we adopt a set-use fee that could be billed by carriers as agents for PSPs, we conclude that our rejection of the set-use fee compensation approach precludes a carrier from billing a particular government-mandate fee for use of payphones on behalf of PSPs. We noted in the Report and Order, however, that, under the carrier-pays approach, carriers have "the most flexibility to recover their own costs, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers."³⁰³ We conclude that the compensation approach adopted in the Report and Order gives carriers the ability, if they desire, to bill their customers for whatever amount they choose for use of the payphone. Carriers may find that billing such a payphone charge would give visibility to the public of the cost of using the payphone, as argued by Sprint.³⁰⁴

91. In the Report and Order, we stated that "[a]lthough some commenters would have the Commission limit the ways in which carriers could recover the cost of per-call compensation, we conclude that the marketplace will determine, over time, the appropriate

³⁰¹ 47 U.S.C. § 228(c)(7).

³⁰² See Policies and Rules Concerning Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, FCC 96-289 (rel. July 11, 1996) at para. 45 ("Restoration of public confidence in toll-free calling was a priority ... for Congress in amending Section 228 of the Communications Act.").

³⁰³ Report and Order at para. 83 (emphasis added).

³⁰⁴ Sprint Petition at 14.

options for recovering these costs."³⁰⁵ We conclude that this approach is necessary to give carriers the most flexibility in recovering their costs. For this reason, we decline to adopt PageNet's proposal that we limit IXC's to spreading the costs of compensation over all 800 subscribers and 800 access code users. Although petitioners from the paging industry argue that the carrier-pays approach will impose substantial costs and burdens on that industry, we note that these petitions do not contain specific data showing the volume of calls the paging companies receive from payphones. Therefore, we conclude that these claims are unsubstantiated and the possible costs and burdens unknown. We also reject, as we did in the Report and Order, proposals that we increase the SLC as a means of spreading the cost of compensation over all callers. We concluded in the Report and Order that "raising the SLC for this purpose would be contrary to the goals of the Act, because these payments would not be borne by either the primary economic beneficiary of the payphone calls or the cost causer."³⁰⁶ While the public is indeed a beneficiary of payphone calls generally, the primary economic beneficiary of a particular compensable payphone call, as discussed above,³⁰⁷ is the carrier that carries the call.

92. In the Report and Order, we concluded that the underlying facilities-based carrier should be required to pay compensation to the PSP "in lieu of a non-facilities-based carrier that resells services[.]"³⁰⁸ Some IXCs argue in response that we should, concurrent with our conclusion that the primary economic beneficiary of a call should pay the requisite compensation to the PSP, require resellers to pay compensation for the calls they receive from payphones and to assume responsibility for the tracking of such calls. We continue to believe that it would be significantly burdensome for some parties, namely debit card providers, to track and pay compensation to PSPs on a per-call basis. We conclude, however, that we should clarify our conclusion in the Report and Order concerning which carriers are required to pay compensation and provide for per-call tracking. We clarify that a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier. If a carrier with a switching capability has technical difficulty in tracking calls from origination to termination, it may fulfill its tracking and payment obligations by contracting out this duty to another entity, consistent with the market-based principles that we established in the Report and Order. If a carrier does not maintain its own switching capability, then, as set forth in the Report and Order and consistent with our clarification here, the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability.

³⁰⁵ Report and Order at para. 83 (citation omitted).

³⁰⁶ Id. at para. 85.

³⁰⁷ See para. 88, above.

³⁰⁸ Report and Order at para. 86.

3. Ability of Carriers to Track Calls From Payphones

a. Report and Order

93. Based on the information in the record, the Commission concluded that the requisite technology exists for IXCs to track calls from payphones.³⁰⁹ We recognized, however, that tracking capabilities vary from carrier to carrier, and that it may be appropriate, for an interim period, for some carriers to pay compensation for "each and every completed intrastate and interstate call" on a flat-rate basis until per-call tracking capabilities are put into place.³¹⁰ We concluded further that it is the responsibility of the carrier, whether it provides intraLATA or interLATA services, as the primary economic beneficiary of the payphone calls, to track the calls it receives from payphones, although the carrier has the option of performing the tracking itself or contracting out these functions to another party, such as a LEC or clearinghouse. In other words, while we have assigned the burden of tracking on the carrier receiving the call from a payphone, parties to a contract may find it economically advantageous to place this tracking responsibility on another party.³¹¹ We concluded that no standardized technology for tracking calls is necessary, and that IXCs may use the technology of their choice to meet their tracking obligations.³¹²

94. The Commission concluded that each payphone should be required to generate 07 or 27 coding digits within the ANI for the carrier to track calls. Currently under the Commission's rules, LECs are required to tariff federally originating line screening ("OLS") services that provide a discrete code to identify payphones that are maintained by non-LEC providers.³¹³ We concluded that LECs should be required to provide similar coding digits for their own payphones.³¹⁴

95. The Commission recognized in the Report and Order that implementing a per-call tracking capability will require new investments for some carriers, particularly small carriers, but we concluded that the mandate of Section 276 that we ensure a fair "per call compensation plan" for "each and every completed intrastate and interstate call" requires these carriers to provide tracking for calls for which they receive revenue, even though they previously

³⁰⁹ Id. at para. 96.

³¹⁰ Id.

³¹¹ Id. at para. 97.

³¹² Id.

³¹³ Id. at para. 98.

³¹⁴ Id.

did not have to compensate the PSP for many of these calls.³¹⁵ We concluded further that, by permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition for tracking subscriber 800 calls, we will have taken the appropriate steps to minimize the per-call tracking burden on small carriers.³¹⁶ In addition, we concluded that, to parallel the obligation of the facilities-based carrier to pay compensation, the underlying facilities-based carrier has the burden of tracking calls to its reseller customers, and it may recover that cost from the reseller, if it chooses.³¹⁷

96. The Commission concluded that carriers should be required to initiate an annual verification of their per-call tracking functions to be made available for FCC inspection upon request, to ensure that they are tracking all of the calls for which they are obligated to pay compensation.³¹⁸ We required this verification for a one-year period, the 1998 calendar year, and delegated to the Chief, Common Carrier Bureau, the authority to establish the form and content, if necessary, of the verification documentation of these per-call tracking capabilities. We concluded that requiring carriers to maintain the appropriate records and certify as to the accuracy of both the data and the tracking methodology would facilitate the prompt and accurate payment of per-call compensation.³¹⁹ We also concluded that PSPs should be allowed to inspect this certification, apart from any proprietary network data. In addition, we stated that we expect the PSPs and carriers performing the tracking to work together to reconcile or explain any PSP data that are inconsistent with the annual certification.³²⁰

b. Petitions

97. MCI contends that the Commission should reconsider its per-call tracking requirements because IXCs cannot track calls either from non-equal access areas or "950" calls.³²¹ MCI contends further that for IXCs to track these calls, the Commission must order the LECs to provide this information.³²²

³¹⁵ Id. at para. 100.

³¹⁶ Id.

³¹⁷ Id.

³¹⁸ Id. at para. 101.

³¹⁹ Id.

³²⁰ Id.

³²¹ MCI Petition at 18-19.

³²² Id.

c. Comments

98. CompTel asserts that the Commission should reconsider its decision to require carriers to bear the burden of tracking calls, and instead place the obligation of billing for payphone calls upon the party seeking that payment -- the PSP.³²³ CompTel argues that it is the PSP which is, in fact, the primary beneficiary of the payphone call compensation, and should pay the cost of identifying the calls for which it is entitled to payment and for the cost of billing its customers for the compensation.³²⁴ LCI states that it does not have the capability to track calls on a per-call basis, and that acquiring such capability presents significant technical and financial obstacles.

d. Discussion

99. In the Report and Order, we recognized that "tracking capabilities vary from carrier to carrier" and concluded, as a result, that "LECs, PSPs, and the carriers receiving payphone calls should be able to take advantage of each others technological capabilities through the contracting process."³²⁵ We also concluded that "no standardized technology for tracking calls is necessary, and that IXC's may use the technology of their choice to meet their tracking obligations."³²⁶ During the period before per-call tracking becomes mandatory, we conclude here that carriers must take all appropriate steps, including using the contracting process, to provide for the per-call tracking of all calls they receive from payphones. Therefore, we decline to modify the per-call tracking requirements set forth in the Report and Order and conclude that carriers should meet their per-call tracking obligations, if they are not otherwise technically able, through contracts with other entities.³²⁷

4. Administration of Per-Call Compensation

a. Report and Order

100. The Commission concluded that we should adopt a direct-billing arrangement between IXC's and PSP's, once tracking capabilities are in place, that would build on the arrangement established in the access code call compensation proceeding, with the addition of the requirement that these carriers must send back to each PSP a statement indicating the

³²³ CompTel Comments at 12-14.

³²⁴ Id. See also LCI Comments at 9-11.

³²⁵ Report and Order at paras. 96-97.

³²⁶ Id. at para. 97.

³²⁷ See also para. 92, above, for our discussion of the per-call tracking obligations of carriers that do not maintain a switching capability.

number of toll-free and access code calls that each carrier has received from each of that PSP's payphones.³²⁸ This arrangement places the burden of billing and collecting compensation on the parties who benefit the most from calls from payphones -- carriers and PSPs. As with the tracking of calls, carrier-payors are free to use clearinghouses, similar to those used for access code call compensation, or to contract out the direct-billing arrangement associated with the payment of compensation.³²⁹

101. The Commission required that the carrier responsible for paying compensation file each year a brief report with the Common Carrier Bureau listing the total compensation paid to PSPs for intrastate, interstate, and international calls; the number of compensable calls carried by the carrier; and the number of payees.³³⁰ This requirement will apply to calendar year 1998, when tracking capabilities are in place and compensation is being paid on a per-call basis. We concluded further that, once per-call compensation is routinely paid by IXC's, this reporting requirement will be terminated after the carriers have filed their reports for the 1998 calendar year.³³¹

102. The Commission concluded that we must establish minimal regulatory guidelines for the payphone industry regarding resolution of disputed ANIs to give LECs a greater incentive to provide accurate and timely verification of ANIs for independently provided payphones.³³² While any party may file a complaint with the Commission about disputed ANIs, the Commission concluded that the better practice is for LECs who maintain the list of ANIs to work with both carrier-payors and PSPs to resolve disputes more efficiently and quickly before lodging a complaint with the Commission.³³³ We also concluded that we should require that each LEC must submit to each carrier-payor on a quarterly basis a list of ANIs of all payphones in the LEC's service area (called the "COCOT list" in the access code call compensation proceeding).³³⁴

103. The Commission concluded that the following guidelines will facilitate the proper verification of payphone ANIs by LECs. First, LECs must provide a list of payphone ANIs to carrier-payors within 30 days of the close of each compensation period (i.e., each quarter). Second, LECs must provide verification of disputed ANIs on request, in a timely

³²⁸ Report and Order at para. 110.

³²⁹ Id.

³³⁰ Id. at para. 111.

³³¹ Id.

³³² Id. at para. 112.

³³³ Id.

³³⁴ Id.

fashion. Such verification data must be maintained and available for at least 18 months after the close of a compensation period. Third, once a LEC makes a positive identification of an installed payphone, the carrier-payor must accept claims for that payphone's ANI until the LEC provides information, on a timely basis, that the payphone has been disconnected. Fourth, a LEC must respond to all requests for ANI verification, even if the verification is a negative response. Carrier-payors are not required to pay compensation once the LEC verifies that the particular ANI is not associated with a COCOT line for which compensation must be paid. Fifth, carrier-payors should be able to refuse payment for compensation claims that are submitted long after they were due. Carriers should not refuse payment on timeliness grounds, however, for ANIs submitted by a PSP up to one year after the end of the period in question. Further, the period for a PSP to bring a complaint to the Commission based on an ANI disputed by the carrier-payor will not begin to accrue until the carrier-payor issues a final denial of the claim. We concluded that the guidelines, as outlined above, will facilitate the proper verification of payphones without imposing undue burdens on LECs, PSPs, or carrier-payors.³³⁵

104. The Commission concluded that the payment of compensation would be facilitated and some disputes avoided if LECs were required to state affirmatively on their bills to PSPs that the bills are for payphone service. We concluded that LECs, who have knowledge that a particular phone line is used for a payphone, must indicate on that payphone's monthly bill that the amount due is for payphone service.³³⁶

b. Petitions

105. AT&T, Sprint, and Cable & Wireless contend that the per-call compensation rules are unadministrable because they rely on fluctuating per-call rates that will make a verifiable compensation system impossible.³³⁷ They argue that a cost-based approach to per-call compensation would establish a fixed compensation amount for all non-coin calls, which would facilitate and lower the administrative costs of compensation.³³⁸ In addition, Sprint argues that unscrupulous PSPs can be expected to claim higher local coin rates for compensation purposes.³³⁹

106. WPTA contends that compensation should be paid on a monthly instead

³³⁵ Id. at para. 113.

³³⁶ Id. at para. 116.

³³⁷ AT&T Petition at 14-15; Cable & Wireless Petition at 10; Sprint Petition at 11.

³³⁸ AT&T Petition at 15; Cable & Wireless Petition at 10.

³³⁹ Sprint Petition at 12.